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City of Beaverton

JUN 14 2018

TIME 09:20 a.m.

City Recorder's
Office

MEMORANDUM

TO: City Council

FROM: Anna Slatinsky, Planning Division Manager

DATE: June 13, 2018

SUBJECT: **Public Hearing on Appeals (APP 2018-0001, APP 2018-0002) of Director's Interpretation for OBRC Beverage Container Redemption Center (DI 2017-0003)**

Planning Division received the attached submission from the Five Oaks Triple Creek Neighborhood Association Committee (NAC) Board after the package for the public hearing was prepared and submitted to the City Recorder. Accordingly, this memorandum will serve to supplement the Director's memorandum dated June 12, 2018.

The Five Oaks Triple Creek NAC Board submission supports the appellants in challenging the Director's Interpretation that the Beverage Container Redemption Center (BCRC) use is allowed in the Community Service Zoning District, and includes three areas of concern.

First, the authors assert that the Director did not respect a plain language interpretation of the Beaverton Development Code (BDC) in determining that the BCRC use is not a "Recycling Center" as defined by the BDC. This allegation is the same as that articulated by the appellants, and is addressed in the Director's June 12 memorandum.

Second, the authors assert that Exhibit 2.5 to the DI, showing the zoning district locations of BCRC operations in other Oregon cities, should not influence how the BDC is interpreted. The Director's Interpretation decision makes it clear that the BDC itself must determine land use regulation in Beaverton. The way other cities in Oregon regulate the BCRC use simply provides context and illustrates how other communities in the state have approached regulation of this new land use.

Finally, the authors express concern that additional BCRC locations could be established elsewhere in Beaverton in commercial zoning districts as a result of the decision. Further, they repeat the appellant allegation that the Director's Interpretation process is a *de facto* legislative amendment to the BDC. It is correct to conclude that the DI decision would allow additional BCRC operations to be established in other Community Service Zoning Districts in the city. As expressed in the Director's June 12 memorandum, the Director's Interpretation application is established in the BDC for the explicit purpose of addressing new uses such as the BCRC. This does not deprive the City Council of their policy prerogative to amend the regulations governing land use in Beaverton, it simply provides a way for new uses to be evaluated in relationship to existing uses already regulated by the code. Future amendments to the BDC could establish different regulations for the BCRC use.

Received 6/12/18
City Recorder's Office

June 8, 2018

VIA REGULAR MAIL

Mayor Denny Doyle
Council Member Mark Fagin
Council Member Betty Bode
Council Member Cate Arnold
Council Member Lacey Beaty
Council Member Marc San Soucie
12725 SW Millikan Way
Beaverton, OR 97005

RE: DI2017-0003 (Oregon Beverage Recycling Cooperative)

Dear Mayor and Council Members:

We write you on a matter of importance to the Board of Directors of the Five Oaks Triple Creek Neighborhood Association Committee. The matter involves an upcoming decision which we understand City Council will be making as to the correct and proper interpretation of the Beaverton Development Code. We respectfully request you overturn a recent decision by your Community Development Department which determined that free-standing facilities operated solely for the recycling, initial processing, and redemption of beverage containers may be sited in any commercial zone in Beaverton.

Attached is a copy of the Director's Interpretation for DI2017-0003, which involves the BottleDrop at 9307 Beaverton-Hillsdale Highway. The Director's decision concludes the business operation conducted by the BottleDrop's owners is a Service Business/Professional Service use instead of a Recycling Center use. Under the Beaverton Development Code, uses which fall under the Service Business/Professional Service category are permitted outright in all four of Beaverton's designated commercial zones.

We would like to offer the following observations about the Community Development Department's decision and analysis:

1. The analysis offered by the Community Development Department is lengthy but is not persuasive on the key decision before this council -- why citizens of Beaverton and Washington County are not entitled to rely upon the plain language of the Beaverton Development Code. A free-standing facility located centrally to serve a designated tributary area and operated solely for the purpose of the recycling, initial processing, and redemption of aluminum, glass, and plastic beverage containers, should reasonably be understood to be a recycling center as that term is used in the Beaverton Development Code. To read into the Beaverton Development Code a notion that the definition of the term recycling center was intended to apply only to extremely large outdoor operations of

a size the Community Development Department is unable to quantify, does violence to the plain language of the BDC and ignores the reasonable expectations of citizens to rely upon the BDC's plain language.

2. The Community Development Department makes reference to Exhibit 2.5, which was submitted by the BottleDrop's owners. The Community Development says that this exhibit provides important context because it demonstrates 21 out of 24 jurisdictions have allowed the siting of similar BottleDrops in commercial or mixed use zones. This seems to be intended to suggest the City of Beaverton will be an outlier if it does not permit the BottleDrop to be sited as an allowed use in the Commercial Service zones. We offer two observations about the Department's reliance on this exhibit which we urge the City Council to consider. First, Oregon is home to more than 200 cities, and no two city development codes are alike. The City of Beaverton is responsible for administering the Beaverton Development Code, and should not give any weight or consideration to the suggestion that 21 other Oregon cities have allowed a BottleDrop in their commercial (or mixed use) zone. Second, reliance on "21 out of 24" completely ignores all jurisdictions in which no BottleDrops have been sited. No BottleDrops have been sited in unincorporated Washington County or the City of Hillsboro. In fact BottleDrops have not been sited in the vast majority of Oregon cities. The City Council should only focus on Beaverton's Development Code and not be concerned with previous site approvals by other jurisdictions applying other development codes. If Beaverton were to consider the development code of any other jurisdiction, the jurisdiction that should be of most concern to Beaverton is Washington County. This follows from the fact that Beaverton and unincorporated Washington County have so many contiguous boundary areas. This intertwined geographic proximity of the two jurisdictions, creates a situation where often the land use decisions of one jurisdiction can have consequences for the citizens of the other jurisdiction.
3. Our Board is extremely concerned about both the approach used by the Community Development Department in reaching this land use decision and the precedent this decision will set. Our Board's more acute concern is that this decision will open the door for the private company which owns the BottleDrops to site other BottleDrops in any location in Beaverton which is designated Neighborhood Service, Community Service, Corridor Commercial, or General Commercial. Under this precedent, no notice will be required to neighboring or other nearby property owners prior to a BottleDrop being sited and beginning operation in any of these four commercial zones. From a more long-range perspective, our Board also is concerned that the Community Development Department's willingness to ignore the plain language of the Beaverton Development Code for this project suggests that it may be willing to take this same approach in evaluating future non-BottleDrop projects in order to accommodate other developers. We view such an approach – where the plain language of the Beaverton Development Code is ignored for purposes of expediency – as a *de facto* legislative amendment to the Beaverton Development Code which invades the policy prerogative of City Council.

We look forward to the June 19 hearing on the appeal of the Director's Interpretation. We respectfully request the City Council reject the Director's Interpretation and find that under the plain language of the Beaverton Development Code the BottleDrop is a Recycling Center which is required to be sited in the Industrial District under a conditional use process if it is to be sited in Beaverton. If City Council believes BottleDrops as a matter of policy should be permitted in areas other than the Industrial District, we suggest the appropriate process for determining where (other than the Industrial District) and under what conditions such siting is appropriate, is a Type 4 legislative change under BDC Section 50.50.

Very Truly Yours,

The Five Oaks Triple Creek Neighborhood Association Committee
Board

David Kamin -- Chair

Dennis Seely -- Vice Chair

John Hooson -- Treasurer

Gayle Seely -- Recorder

Richard Pickett -- BCCI Representative

Pat Mitchell -- Board Member

Erin Hatch -- Board Member

(Signature Pages Follow)

Enclosures

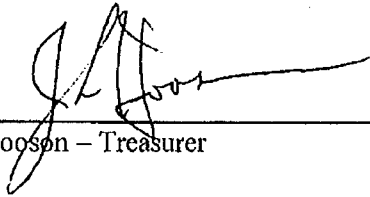
David Kamin
David Kamin – Chair


Pat Mitchell – Board Member


Richard Pickett – BCCI Representative

Dennis Seely
Dennis Seely – Vice Chair

Gayle Seely
Gayle Seely - Recorder



John Hooson - Treasurer

Erin Hatch
Erin Hatch – Board Member



Community Development Department
Planning Division
12725 SW Millikan Way
Beaverton, OR 97006
General Information (503) 526-2222 V/TDD
www.BeavertonOregon.gov

To: Interested Parties
From: City of Beaverton, Community Development Department
Date: April 30, 2018
Subject: DI2017-0003 Director's Interpretation for Oregon Beverage Recycling Center (OBRC) Beverage Container Redemption Center (BCRC)

Please find attached the Notice of Decision for the Director's Interpretation concerning OBRC – BCRC, case file number DI2017-0003. Pursuant to Section 50.40.11.E of the Beaverton Development Code, the decision for DI2017-0003 OBRC – BCRC is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Beaverton Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DR2017-0003 is 4:30 p.m., Monday, May 14th, 2018.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed at the Beaverton Planning Division, Community Development Department, 4th Floor, Beaverton Building/City Hall; 12725 SW Millikan Way between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. For more information about the case file, please contact Anna Slatinsky, Planning Division Manager, at (503) 526-2429.



**NOTICE OF DECISION
DIRECTOR'S INTERPRETATION
OREGON BEVERAGE RECYCLING COOPERATIVE (OBRC)
BEVERAGE CONTAINER REMPTION CENTER (BCRC)**

DECISION DATE: April 30, 2018

TO: All Interested Parties

FROM: Cheryl Twete, Community Development Director

CASE FILE NO: DI2017-0003 OBRC - BCRC

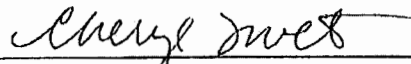
LOCATION: The subject property is addressed as 9307 SW Beaverton-Hillsdale Highway and is identified as Tax Lot 4100 on Washington County Assessor's Map 1S1-14AB.

SUMMARY: In response to the opinion issued by the Oregon Land Use Board of Appeals (LUBA, No. 2017-027), and the applicant's request for a Director's Interpretation application sought by the applicant, the Community Development Director has considered all materials submitted to the record and hereby makes this interpretation in support of the BCRC, finding it to be substantially similar to a use currently allowed in the Community Service zone, based on the facts and findings stated herein.

PROPERTY OWNER/APPLICANT: Stephanie Marcus, Jules Bailey
Oregon Beverage Recycling Cooperative
3900 NW Yeon Avenue
Portland, OR 97210

APPLICANTS REPRESENTATIVE: Michael C. Robinson, Garrett H. Stephenson
Schwabe, Williamson & Wyatt
1211 SW 5th Avenue, Ste. 1900
Portland, OR 97204

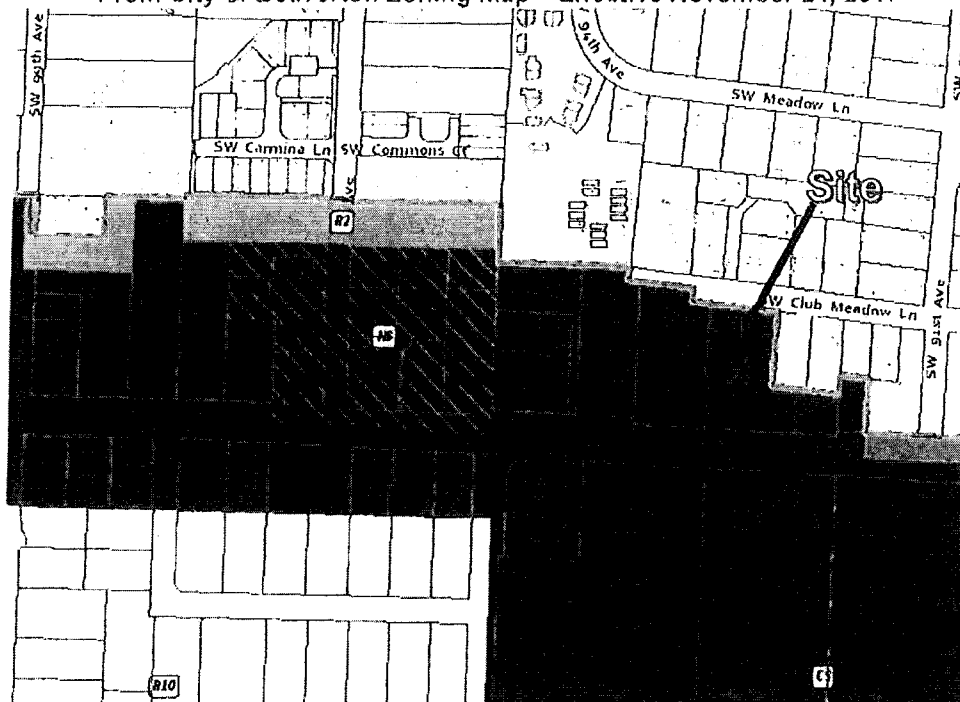
APPLICABLE CRITERIA: Director's Interpretation - BDC Section 40.25.15.1.C
Authorization for Similar Uses – BDC Section 10.50

AUTHORIZATION: 
Cheryl Twete
Community Development Director

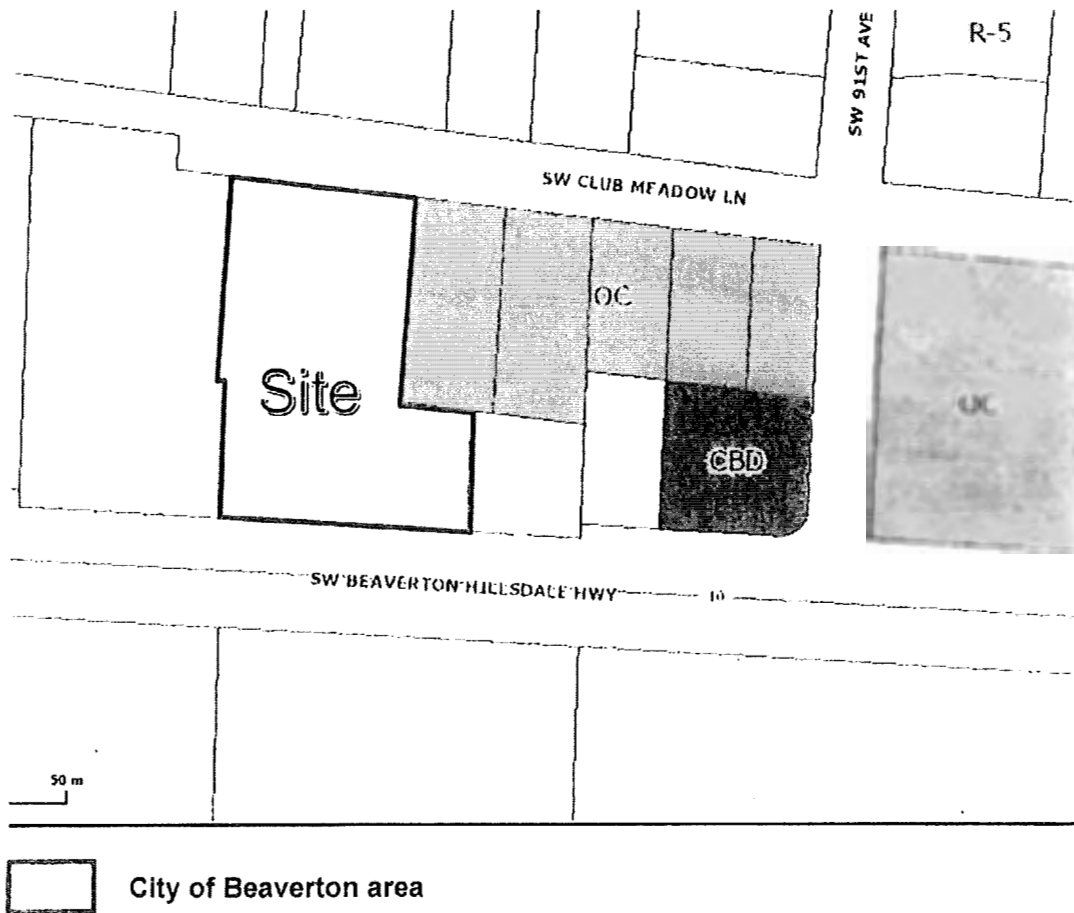
Aerial Photo from 2016



From City of Beaverton Zoning Map – Effective November 24, 2017



Washington County Zones in Vicinity



BACKGROUND

Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>120th Day*</u>	<u>365th Day**</u>
DI2017-0003	December 21, 2017	January 10, 2018	May 10, 2018	January 10, 2018

* Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application was determined to be complete or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise.

** Pursuant to ORS 227.178, the total of all extensions may not exceed 245 calendar days after the initial 120 calendar days. This is the latest date by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Community Service (CS)	
Land Use Designation	Community Commercial (CC)	
Current Development	Beverage Container Redemption Center	
Site Size	The subject property is approximately 38,717 square feet	
NAC	Denney Whitford / Raleigh West	
Surrounding Uses	<u>Zoning:</u> North: Washington County R-5 South: City CS (Community Service) East: City CS / Washington County OC West: City CS	<u>Uses:</u> North: Single Family Residential South: Commercial East: Single Family Residential / Commercial West: Commercial / Veterinary Hospital

Table of Contents

Attachment A – Analysis and Findings for Director Interpretation

EXHIBITS

Exhibit 1. Materials by Beaverton Staff

- 1.1 LUBA Final Order and Opinion No. 2017-027
- 1.2 City of Beaverton Design Review Compliance Letter dated February 22, 2017
- 1.3 Beaverton Police Department statement dated April 9, 2018
- 1.4 Environmentally Conscious Recycling Renewal Application dated June, 2016
- 1.5 Sample online listings of Recycling Center products April 27, 2018

Exhibit 2. Materials Submitted by the Applicant

- 2.1 Combined application and materials package prepared by the applicant dated December 21, 2017
- 2.2 Existing Condition Traffic Analysis, prepared by Mackenzie dated March 20, 2018
- 2.3 OLCC orders and Graphic illustration of current Convenience Zone radius approved by OLCC for Beaverton store and current Convenience Zone approved for the Tigard store at 14411 SW Pacific Highway
- 2.4 Letter in response to public comments received, dated March 6, 2018
- 2.5 Updated review of zoning district locations of OBRC facilities in other cities, received March 21, 2018

Exhibit 3. Materials Received from the Public

Pursuant to Section 50.40.3.1 of the Development Code, the comment closing date for written comments from the public, other than the applicant, was February 7, 2018.

- 3.1 E-mail dated February 7, 2018, by Joel Schoening, 3900 NW Yeon Ave
- 3.2 Letter dated January 5, 2018, by Meadow Park Middle School, 14100 SW Downing St
- 3.3 Letter dated February 7, 2018, signed by Tom Powers, 5715 SW Illinois
Christy Splitt, Portland, Oregon
Chris Parta, 13150 SW Haystack Dr.
Annika Read, 9180 SW Camille Terrace
Heidi Eggert, 9180 SW Camille Terrace
Michael Achterman, 1725 NW 131st Ave
Lauren Garrett, 7775 SW Maple Dr
Tennell Dietzman, 4285 SW Laurelwood
Sara DeNezza, 8670 SW Birchwood Road
Jon-Paul Praisler, 8065 SW Maple Dr

- 3.4 E-mail and letter dated February 7, 2018, by Mike Connors, 1331 NW Lovejoy St., Suite 950
- 3.5 Letter dated February 7, 2018, by Michael G. Neff of Haglund Kelley LLP, 200 SW Market Street, Suite 1777
- 3.6 E-mail dated February 7, 2018, by Richard Skayhan, 4820 SW Chestnut Place
- 3.7 Letter dated January 18, 2018, by Trisha McPherrren, 9115 SW Club Meadow Lane
- 3.8 Letter dated January 30, 2018, by Karie Trujillo, 4770 SW Chestnut Place
- 3.9 Letter dated February 4, 2018, by Michael Matschiner, 9275 SW Club Meadow Lane
- 3.10 Letter dated January 10, 2018, by Brandon and Holli Bridgens, 9240 SW Club Meadow Lane
- 3.11 Note – not dated, by Marie and Tony Kikes, 4800 SW Chestnut Place
- 3.12 Letter dated February 6, 2018, by Michael H. Miller, 5950 SW Spruce Ave
- 3.13 Letter date-stamped February 5, 2018, by Joseph Conrad, 9207 SW Club Meadow Lane
- 3.14 E-mail dated February 5, 2018 and letter dated February 3, 2018, by Robert T. Franklin, no address provided
- 3.15 E-mail and letter dated February 5, 2018, by Ron Earp of Laurelwood Animal Hospital, 9315 SW Beaverton-Hillsdale Hwy
- 3.16 Letter dated February 2, 2018, by Jim and Georgia Hogan, 9025 SW Club Meadow Lane
- 3.17 Letter dated February 20, 2018, by Brandon and Holli Bridgens, 9240 SW Club Meadow Lane
- 3.18 Letter dated January 28, 2018, by Sue Staehli, 4477 SW 94th Ave
- 3.19 Letter dated January 24, 2018, by Lynne Cartmill, 9360 SW Club Meadow Lane
- 3.20 E-mail dated January 27, 2018, by Nupur Pande, 9265 SW Meadow Lane
- 3.21 E-mail dated January 19, 2018, by Trisha McPherrren, 9115 SW Club Meadow Lane
- 3.22 Letter dated February 6, 2018, by Pat Bukieda and undersigned, address not provided
- 3.23 Letter dated February 2, 2018, by Lynn F. Erdman at Laurelwood Animal Hospital, 9315 SW Beaverton-Hillsdale Hwy

A full discussion of issues raised in the written comments listed in this section that are responsive to the approval criteria for the Director's Interpretation is provided in Attachment

A. However, a number of comments received from the public address other issues not directly or even indirectly related to the approval criteria. The applicant's letter of March 6, 2018 (Exhibit 2.4) includes responses to a number of these issues. Additional discussion is provided in this section.

Several comments describe concerns about safety of persons and property, and a decrease in livability in the neighborhoods near the BCRC. Some comments describe observing people collecting beverage containers from private waste receptacles, or people pushing carts, or carrying bags with redeemable containers. Some comments describe a certain level of discomfort in seeing people in their neighborhood that don't appear to be residents. More seriously, some comments describe criminal activity that allegedly is occurring in the area because people who engage in activities such as drug use and theft come to the neighborhood to redeem containers at the BCRC.

While criminal activity and nuisance behaviors are not regulated by the Beaverton Development Code, and are not related to criteria for approval for the Director's Interpretation, it is important that city officials be informed about these concerns so that the issues can be understood and addressed appropriately. Accordingly, the Beaverton Police Department conducted an analysis of complaint calls in the area surrounding the BCRC, comparing a time period before the facility opened with a time period when it was in operation (Exhibit 1.3).

The analysis noted an increase in the number of complaints in the time the BCRC was operating compared to the prior time period, but did not conclude that there was sufficient evidence that this increase was caused by the presence of the facility.

One of the factors to bear in mind when considering a possible connection between the BCRC and an increase in complaints and concerns in the area is the location of grocery stores that accepted redeemable containers prior to BCRC opening. According to documentation showing the locations of participating grocery stores provided by OBRC (Exhibit 2.3), several stores that have discontinued redemption services since the BCRC opened are located along the Beaverton Hillsdale Highway corridor. These include New Seasons, Fred Meyer, and Walgreens to the East, and Target, Trader Joes, BiMart, Natural Grocers, and Fred Meyer to the West.

The safety and quality of life concerns some commenters express may or may not be directly related to the BCRC. Beaverton leadership recognize the community concerns and are committed to maintaining the city's high quality of life.

The Mayor's Office established a Community Services Program last year. As outlined in the city's 2018-19 budget document, the program's goal is to build and maintain relationships with nonprofit partners providing social service assistance to the Beaverton community and to centralize internal sources of support, ensuring accountability in program objectives supporting Beaverton residents in need.

Program staff work on:

- Severe Weather Shelter Coordination – Coordinate the expanded season for the Beaverton Severe Weather Shelter tracking outcomes of services provided, supporting recruitment and training of volunteers, ensuring communication between the city and nonprofit staff, and overseeing donations.
- Expanded homelessness support – Oversee and coordinate with partners on expanded services for families and individuals experiencing homelessness, including

a social worker at the Beaverton City Library, contract and host support for Family Promise of Beaverton, explore parking programs, and convening with other local agencies.

- Social Service Funding Grant Management – Managed the Social Service Funding Committee and the grant process distributing nearly \$200,000 in funds to non-profit agencies.
- Nonprofit Technical Support – Offering workshops and technical support to nonprofit organizations and staff looking to grow their knowledge, skills, and abilities to better serve Beaverton residents.
- Charity Drive/Beneficiaries Management – Work with city staff to coordinate the designation of nonprofit beneficiaries for events.
- Strategic Partnerships – Manage service provision for Mayor and City Council social service priorities such as the Tax Assistance Program. Established contract with Family Promise of Beaverton, which will fulfill the identified need of temporary housing for homeless families in Beaverton. Working with the Beaverton City Library to establish contracts with social service providers that can refer individuals in need to appropriate services.

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
DI2017-0003 OBRC-BCRC**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications. The applicant responds to these criteria in the document prepared by Michael Robinson, dated December 21, 2017, titled Narrative in Support of the Request filed by Oregon Beverage Recycling Cooperative (OBRC).

These approval criteria are as follows:

- 1. The proposal satisfies the threshold requirements for a Director's Interpretation application.***

The applicant has requested that the Director interpret the Beaverton Development Code in writing. Staff finds the Director's Interpretation (DI) application to be consistent with threshold number one.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 2. All City application fees related to the application under consideration by the decision-making authority have been submitted.***

The applicant has paid the fee associated with the Director's Interpretation Application.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.***

The Applicant has identified several applicable Comprehensive Plan policies (Exhibit 2.1), and states that there are no conflicts with these policies. The Director has identified the following applicable Comprehensive Plan policies for discussion:

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses. Allow commercial uses at a range of scales, including large-format retail, to address community needs.

This policy specifies that the purpose of the Community Commercial Land Use designation, within which the BCRC is located, is to accommodate a wide variety of uses at a range of scales, including large-scale retail and convenient drop-off of redeemable beverage containers.

Goal 8.8.1: Reduce the amount of solid waste generated per capita.

a) The City shall support efforts to reduce the amount of solid waste generated from household, industrial, and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements.

The applicant states that the requested interpretation is consistent with this policy because the BCRC collects and removes beverage containers from the waste stream. The Director concurs and notes that the BCRC additionally has the explicit purpose of making bottle redemption and recycling pursuant to state law more accessible and convenient for city residents. Allowing recycling/redemption centers in areas that easily serve the population encourages redemption and recycling. Ultimately, the BCRC model may lead to an increase in the amount of beverage containers that are diverted from landfills. Recent data (<http://www.bottlebill.org/legislation/usa/oregon.htm>) shows that a greater proportion of redeemable beverage containers have been returned statewide since BCRC facilities have been operating; 64.3% in 2016, and 82% in 2017. This increase is at least partially attributable to an increase in the deposit/refund but may also be due to the increased convenience for BCRC patrons compared to the previous dispersed model.

Goal 9.1.1 Maximize efficient use of the city's employment land

d) Identify and protect the city's employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones.

The applicant states that adopting the requested interpretation will help protect and conserve industrial land for higher intensity industrial uses.

The Director concurs. Beaverton has limited industrially zoned land to provide jobs and space for growing businesses to expand. Commercial and service-related uses such as BCRC that are primarily characterized by patronage from the general public are ideally located in commercial areas.

Development Code

10.20 Interpretation and Application of Code Language.

The Director recognizes the extensive discussion of this section provided by the applicant (Exhibit 2.1).

The Director concurs that the Director's Interpretation application laid out in BDC Section 40.25 is the appropriate mechanism for requesting an interpretation of the BDC in this case.

10.50 Authorization for Similar Uses.

The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director's Interpretation, as provided by Section 40.25.

The Applicant has provided an extensive discussion of this provision (Exhibit 2.1).

The Director notes that the Director's Interpretation application laid out in BDC Section 40.25 identifies the criteria for approval of that application. The Director's discussion of the provisions of Section 10.50 are encompassed in the response to criterion 4 below.

20.10.10 Purpose

* * * *

2. Community Service (CS)

The CS District is intended to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Beaverton's major streets carry high traffic volumes and allow for larger scale, more intense commercial uses such as regional retail and fast food restaurants with drive-up windows, as well as smaller scale retail and service uses. Uses like the BCRC serve a similar customer and operate within the range of scales of other uses located along the city's major streets.

60.55 Purpose and Intent.

It is the purpose and intent of this chapter to establish design standards and performance requirements for all streets and other transportation facilities constructed or reconstructed within the City of Beaverton.

Some public comments received raise concerns about the potential for traffic impacts related to BCRC operations. The applicant retained an engineering firm to conduct an analysis of transportation impacts (Exhibit 2.2). This analysis concluded that the roadways operate and will continue to operate acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity. The City Traffic Engineer has reviewed the applicant's analysis and concurs that the impact on surrounding streets and intersections is insignificant.

Therefore, the Director finds that the proposal meets the criterion for approval.

4. *When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.*

According to the applicant, the proposed use is a BCRC, which is not expressly identified in the BDC as a Permitted, Conditional or Prohibited Use. The applicant's response to Criterion No. 4 refers to the response provided to BDC Section 10.50, where the applicant explains that a BCRC is a permitted use because it is substantially similar to a "Service Business or Professional Services" use, and is not a "Recycling Center."

The Director also includes the following discussion, which addresses in detail the two findings required by this criterion and informed by the provisions of Section 10.50. First, that the BCRC is not already expressly identified in the Development Code, and second, that the BCRC is substantially similar to another use currently allowed in the CS zoning district.

As the applicant explains, the BCRC is an establishment operated for the purpose of receiving redeemable beverage containers from customers, providing applicable rebates for these containers, and consolidating these containers for transport to a larger facility for further processing. The BCRC is in fact a new type of recycling business in Oregon. In 2017 the Oregon Legislature enacted ORS 459A.735 to provide a convenient location for customers to redeem beverage containers, and allow retailers of beverages sold in redeemable containers to themselves opt out of redeeming those containers when a business like the BCRC operates within the parameters laid out in ORS 459A.

Public comments in response to this Director's Interpretation application and briefing to LUBA in a previous appeal of the city's approval of the BCRC's design review application assert that the BCRC is a "Recycling Center," which is an expressly identified conditional use in the Industrial (IND) zone. BDC 20.15.20. There, Recycling Centers are grouped with "Salvage Yards" and "Solid Waste Transfer Stations." Since "Recycling Center" is not a defined term in Chapter 90, the Director must determine if what opponents characterize as a "recycling center" in the CS zone is the same thing as the Recycling Center grouped together with Salvage Yards and Solid Waste Transfer Stations as a conditional use in the IND zone.

Of the three terms, only Salvage Yards has a definition in Chapter 90:

A place out-of-doors where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled, including vehicle wrecking yards, building wrecking yards, used lumber yards and places of storage of salvaged building; wrecking and structural steel materials and equipment, but not including rummage, yard or garage sales of no more than four (4) days duration. Three or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard.

The statement that "[t]hree or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard" serves a different purpose from the rest of the definition. It does not mean that salvage yards are typically characterized by three or more dismantled or inoperable vehicles. The focus of the sentence is on the dissonant impacts of even a small collection of dismantled or inoperable vehicles, which justify confining the collection to industrial zones.

BDC 10.20.6.B states that when a term is not defined in Chapter 90, it has the meaning set forth in Webster's Third New International Dictionary, 1993. The dictionary entry for 'recycle' is as follows:

to pass again through a cycle of changes or treatment <an industrial plant. . . cooling water through cooling towers as many as 50 times – J.R. Whitacker & E. A. Ackerman>; esp : to feed back continuously in a laboratory or industrial operation or process for further treatment

Generally speaking, uses are conditional when they have external impacts that exceed those of permitted uses in the zone. "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" are conditional uses in a zone where Storage Yard; Fuel Oil Distributors; Bulk Fuel Distributors; Heavy Equipment Sales; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; and Warehousing are among the permitted uses. This context indicates that the scale of what is meant by "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" in the IND zone is completely different from a BCRC use, which has almost no external impacts compared to the permitted uses in the zone and is on a much smaller scale. While BCRC's use is recycling, the term "recycling" in current usage is associated with a broad range of activities that are permitted in every zoning district today. The term "Recycling Center," as it is used in the BDC, does not include any and all recycling activities that occur in the city.

For example, many homes have areas for collecting and sorting recyclable materials under the kitchen sink, or in a pantry or garage. There are even consumer products marketed as "recycling centers" designed for home use (see Exhibit 1.5). Office buildings, restaurants, schools and parks all routinely collect, sort, and package recyclable materials. It would be absurd to suggest that these activities were intended to be confined to IND districts, and subject to a conditional use review.

While the BCRC is a commercial facility that operates at a larger scale than the widely distributed recycling activity described above, it is equally, if not more, distant on the recycling spectrum from large operations that receive recyclables, mostly transported by truck, primarily from commercial haulers. Patrons of the BCRC bring in bags of redeemable containers that have accumulated through ordinary household or commercial use over a period of time, perhaps a few weeks or a month (or maybe after a New Year's Eve party).

ORS 459A-735 explicitly establishes requirements for the number of containers per customer that must be accepted by facilities under the program. Bottle drop locations may set a maximum number of containers to be accepted per customer per day, but that maximum must be at least 350 for automated sorting, and 50 containers for hand-sorting, as well as drop off of at least 125 bagged containers. The BCRC meets statutory requirements by allowing daily container redemption up to 350 auto-sort and 50 manual sort.

Environmentally Conscious Recycling ("ECR") is a regional example of a large recycling facility in Multnomah County (Exhibit 1.4). It may be accessed by the general public for recyclable materials and construction debris drop-off, but much of the incoming materials

is from trucks operated by the business itself or other businesses with the primary function of solid waste disposal, or a need to dispose of large quantities of debris and recycling. The facility processes 90,000 tons of material per year, and is 9.2 acres in size, with a significant amount of the unenclosed lot area devoted to separating recyclable from non-recyclable material. Equipment on site includes:

a wood grinder, metal shear/baler, cardboard baler, plastic baler, rock crusher, box-spring recycling machine. ECR has four excavators and four front wheel loaders, four forklifts for handling incoming and outgoing materials.

ECR dwarfs the BCRC. The definition of Salvage Yard in BDC Chapter 90, above, matches in scale the operations of ECR, not the BCRC.

Since it is clear that the BDC term "Recycling Center" cannot be interpreted to include recycling activity of all sizes and shapes, a Director's Interpretation is required to articulate the scope of the term. The Director's Interpretation in this case must also determine whether the operations of the BCRC fall within the designated scope.

A number of factors and characteristics can be used to assess the scale and intensity of a use:

- The users or customers that the establishment serves; the general population, other businesses, industrial businesses, etc.;

The BCRC is explicitly intended to provide the general public with a convenient location to return redeemable bottles, rather than a location for medium or large-scale businesses to use.

- Noise, odors, and other potential impacts, whether the use is outdoors or enclosed;

The BCRC is fully enclosed, allowing potential noise and odors to be limited. In addition, the Beaverton City Code Chapter 5.15 and Section 5.05.050 establish limitations on noise and odors, respectively. Opponents complain that there are bottle and can crushing facilities on the subject property. While that is true, their concern is unfounded and does not support the argument that the BCRC is an industrial use. Similar crushing activities have been occurring for years and continue to occur at supermarket machines, and the number of bottles and cans crushed on site at the BCRC does not increase external impacts on neighboring properties compared with ongoing grocery store operations.

- The volume and type of traffic generated by the use; private passenger vehicles, small commercial trucks, large tractor trailer trucks;

As noted above, the BCRC serves the general public, and as such the majority of the traffic associated with the facility is private passenger vehicles; large trucks pick up sorted and compressed containers a few times a week. Based on the data presented in the traffic analysis (Exhibit 2.2, Figure 3), the facility is generating approximately 7.05 trips per 1000 gross square feet of building area (gsf) during the PM peak hour. For

context, here are the same PM peak hour trip generation numbers for other land uses (ITE Trip Generation Manual, 9th Edition) allowed in the Community Service Zoning District, trips per 1,000 gsf:

Free-standing discount store	4.98 trips
Quality restaurant	7.49
Discount supermarket	8.34
Pharmacy with drive-through	9.91
Daycare	12.34
Drive-in bank	24.30
Fast food with drive-through	32.65

All of these factors and characteristics indicate BCRC operations are distinct from both the BDC-defined Recycling Center and the regional examples of recycling centers and solid waste transfer stations that the BDC regulates as conditional uses in IND districts.

The Director notes a supplementary submission from the applicant (Exhibit 2.5), that indicates the zoning district locations of every BCRC in the State of Oregon. While this Director's Interpretation must interpret the BDC, where other jurisdictions determined a BCRC would be most appropriate provides additional context. Twenty-one out of 24 jurisdictions have approved locating a BCRC in a commercial or mixed-use zoning district.

Based on the submission of the applicant and the discussion above, the Director concludes that the term "Recycling Center," as it is used in the BDC, does not include BCRC operations.

The second question to evaluate is whether the BCRC is substantially similar to a use permitted in the Community Service (CS) zoning district. The Director does not believe the inclusion of the word "substantially" indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, "substantially" in this context means "more or less," where the focus is on the intensity of activity and the external impacts generated by the activity.

The CS district is one of four commercial zoning districts included in the BDC. It is a general purpose commercial district that allows a wide range of businesses and service uses, as well as residential use. It is mapped along regional corridors such as Beaverton Hillsdale Highway, Cedar Hills Boulevard, and other relatively dense, high traffic locations. As discussed in response to criterion 3, the purpose of the CS District, stated in BDC 20.10.10, is:

... to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Businesses like retail stores with no limitation on size; eating and drinking establishments, including fast food drive-up windows; and gas stations are all allowed. Service businesses such as health clinics, real estate offices, and health clubs are also allowed.

Many allowed uses in the CS district have characteristics similar to a BCRC. For example, a drive-up pharmacy restaurant can generate 9.91 trips per 1000 gsf in the pm peak hour, while the BCRC traffic study concludes that it will generate 7.05 trips per 1000 gsf. A number of permitted uses also draw users from a wide geographic area. Large shopping centers, for example, typically draw customers from a regional radius. These uses typically involve an in-person exchange of goods or services for money at an establishment open to the public.

Most importantly, the specific activity of beverage container redemption that takes place at the BCRC facility has been part of ordinary grocery store operations since the bottle bill was passed in 1971, and is permitted in the CS district. Even today, while the presence of the BCRC has allowed grocery stores in the area to opt out of container redemption, stores selling beverages in redeemable containers that are not located within the designated radius of a BCRC continue to be required by state law to redeem these containers for customers.

As stated above, the CS Zoning District allows a wide variety of uses, including "Service Businesses and Professional Services" as discussed in the applicant materials, "Eating and Drinking Establishments" and "Retail Trade." While staff recognizes that the BCRC is substantially similar to uses included in the two former categories, the specific activity of container redemption has long been associated with grocery store operation, which falls into the "Retail Trade" use category.

Since the specific activity (container redemption) is substantially similar, in type, scale and effect, to many other uses currently allowed in the CS district, the criteria for approval are satisfied.

Therefore, the Director finds that the proposal meets the criterion for approval.

5. *The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.*

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on January 10, 2018.

Therefore, the Director finds that the proposal meets the criterion for approval.

6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

The necessary documents related to the Director's Interpretation have been submitted. The earlier Design Review decision issued by the city in case file DR2017-003 for OBRC (building and site remodel) subject to review under separate criteria

identified in BDC Section 40.20.15.1.C. is affirmed with findings that support the use as permitted outright by the zone.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated herein, the Community Development Director hereby makes this interpretation in support of the applicant's BCRC, finding it to be substantially similar to *Service Business / Professional Service*, a use permitted outright in the Community Service zone under Chapter 20, Section 20.10.20 of the Beaverton Development Code.

REDEMPTION CENTER	ZONING DESIGNATION
Albany 2141 Santiam Hwy S.E.	CC -- Community Commercial
Beaverton 9307 S.W. Beaverton-Hillsdale Hwy	CS -- Community Service
Bend 755 N.E. 2 nd Street	ME -- Mixed Employment
Corvallis 1111-B N.W. 9 th Street	MUS -- Mixed Use Community Shopping
Eugene 2105 W. Broadway	E-2 -- Mixed Use Employment
Forest Grove 2933 Pacific Avenue	CC- Community Commercial
Grants Pass 1040 Rogue River Hwy	GC -- General Commercial District
Gresham 1313 E. Powell Boulevard	DCL -- Downtown Commercial Low-Rise
Hermiston 740 W. Hermiston Avenue	C-2 -- Outlying Commercial
Klamath Falls 2702 Eberlein Avenue	GC -- General Commercial
Medford 1179 Stowe Avenue	LI -- Light Industrial
Milwaukie 6106 S.E. King Road	C-G -- General Commercial
Newport 158 E. Olive Street	C-3 -- Commercial Heavy
Ontario 1383 N.E. 3 rd Avenue	C2H -- City Heavy Commercial

REDEMPTION CENTER	ZONING DESIGNATION
Oregon City 14214 First Street A&B	GI – General Industrial District
Portland Delta Park 1176 N. Hayden Meadows Drive	CG – General Commercial
Portland Glisan 12403 N.E. Glisan Street	CG – General Commercial
Redmond 1204 S.E. Lake Road	M-2 – Heavy Industrial
Roseburg 740 N.E. Garden Valley Boulevard	C3 – General Commercial
Salem Lancaster 1917 Lancaster Drive N.E.	CR – Retail Commercial
Salem Northeast 1880 Commercial Street N.E.	CG – General Commercial
Salem South 4815 Commercial Street S.E.	CR – Retail Commercial
Springfield 2289 Olympic Street	Major Retail Commercial
Tigard 14411 S.W. Pacific Hwy	CG – General Commercial
Wood Village 23345 N.E. Halsey Street	NC – Neighborhood Commercial